



GREAT BASIN WATER NETWORK

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September 7, 2010

Jason King, State Engineer
Division of Water Resources
901 Stewart St. Suite 2002
Carson City, NV 89701

Dear Mr. King,

GBWN is pleased to respond to your request for feedback on the website announcement of August 19, 2010 regarding upcoming protest hearings on the Southern Nevada Water Authority's (SNWA) proposed interbasin water transfers. We have received many comments and questions from interested and affected citizens from all over Nevada and western Utah about the proposed re-noticing and re-hearing schedule and procedures. You will be receiving written comments on legal aspects from our attorney, Simeon Herskovits of ACE.

GBWN appreciates your publication of notice on the proposed hearing procedures on the Division of Water Resources (DWR) website. We have specific comments, concerns, and questions on the website topics: interpretation of the Supreme Court's recent rulings in the *Great Basin Water Network v. Taylor* case, the Informational Statement, the proposed schedule, and the inventory requirement.

INTERPRETATION:

Having early notice of the hearing schedule for Spring and Cave, Dry Lake, and Delamar Valley basins is helpful to us in our communications with citizens who remain extremely concerned about the impacts of this massive interbasin water transfer proposal by SNWA. It also helps us plan for the workload in preparing for this hearing.

Unfortunately, the early notice only covered four of the basins with SNWA applications for interbasin water transfers. We are wondering when the applications in the other basins, which are also subject to the recent Supreme Court rulings, will be re-noticed and new hearings scheduled so that we can arrange for our participation in the administrative hearing process. We had hoped that, as you indicated in your July 7 Interpretation statement, the schedule would be staggered so that there would be sufficient time for the parties to prepare for the hearings and for the State Engineer to consider all of the protest issues in the many basins involved, including the cumulative impacts of the proposed pumping in down-gradient basins. Staggering the hearings over the next several years would also decrease the financial impacts on the DWR office as well as allowing protestants the opportunity to fully participate in these important water decisions.

One of the biggest questions on the website statements interpreting the Supreme Court rulings is how the 2010 protests would apply to the original 1989 applications. Since the 2010 SNWA applications are "duplicative," which applications will be re-noticed for additional protests? Will protests be required for both the 1989 and the 2010 SNWA applications? When will the one-year period to meet the hearing requirement start? Given the unprecedented duplicative SNWA applications and resulting protests, we suggest that the duplicative applications be assigned a single set of application number and the 1990 and already filed 2010 protests be assigned to apply to this single set of Las Vegas Valley Water District (LVVWD)/SNWA application numbers. These application numbers would then be the ones in the future re-protest notices. This would also help to resolve the issues in the Supreme Court rulings on inclusiveness and the right for protestants to be heard, without the protestants having to continue to pay to file protests on duplicative SNWA applications. No one we've talked to wants another set of duplicative protests which would again stress your office resources.

INFORMATIONAL STATEMENT:

GBWN was very pleased to learn that the State Engineer believes that the original protestants do not have to refile during the court-ordered re-protest period and that original protestants can change or add to their protest points. In addition, we appreciate your decision to plan for a substantial enough time period for the hearing to meaningfully consider the evidence and explore the significant issues raised by these applications. Also, posting all hearing documents to the DWR website is very important in making the process transparent and providing the interested and affected citizens with practical access to the crucial public information contained in those filings.

GBWN is concerned, however, that the hearing schedule appears to be set before the new re-protest period has begun, thereby excluding new protestants from being able to be heard on hearing procedures. In addition, we do not agree with background statements that the 16 year delay between the filing of the 1989 applications/1990 filing of protests and the actual protest hearings was caused by the protestants. Nor do we agree with the omission of the protest hearings also held on Coyote Springs, 3-Lakes and Tikaboo Valley basins but not yet held in the other basins for which the LVVWD filed interbasin water transfer applications in 1989.

GBWN is sensitive to the financial and workload resources required to meet DWR's obligations to hold equitable administrative water hearings. We will support DWR requests to obtain sufficient budgets to carry out this mission and will assist DWR in searching for adequate meeting space for a pre-hearing conference or status conference and in securing video and web broadcast resources for the protest hearing in order to accommodate the hundreds of protestants who remain extremely concerned about the massive interbasin water transfer proposals.

GBWN also is very concerned about the lack of opportunities for Utah citizens to fully participate in Nevada water hearings in which water decisions are made on pumping impacts to Utah water rights and resources. To ensure that such an opportunity is provided, the re-protest notices should be published in Utah newspapers in areas which could be impacted by SNWA's proposed pumping in Snake Valley and other basins from which water flows into Utah, such as Spring Valley. We are attaching a copy of a letter from the Confederated Tribes of the Goshutes which expresses tribal concerns about the administrative hearing procedures.

While we can understand why some pre-hearing or status conferences have not been as productive as

possible in developing procedures for orderly and equitable protest hearings, we believe that one is necessary for this hearing process because of the State Engineer's directions and the short time frame. The State Engineer's requirements include consolidation of protestants' cases and expert witnesses and streamlining the hearing process. Meeting these requirements will be very difficult as not all protestants will be represented by GBWN's attorney.

Among other questions not yet addressed are:

1. how the records of the previous two hearings will be handled at the new hearing,
2. whether and which hydrological models will be required and what their scope will be,
3. what the State Engineer regards as "general" issues (covered in NRS 533.370 (1)(c) and 533.370(6)(a) and (b)) which are to be covered in the first part of the hearing and what are the issues specific to Spring and the 3 basins to be covered in the last part of the hearing,
4. how parties will be admitted to the administrative hearing and how their cases will be scheduled.

PROPOSED SCHEDULE:

While the GBWN appreciates the advance notice of a schedule for protest hearings for Spring, Cave, Dry Lake and Delamar Valley basins, we are concerned that this schedule results in protests being published during the Thanksgiving, Christmas, and New Year's holiday period. And the July/August hearings would then occur during the busiest periods of farm and ranch operations, those most likely to be harmed by SNWA's proposal. Is there a possibility of holding the hearing in the late fall, or in the winter of 2011/2012? While we are requested to provide "written" suggestions for an orderly and expeditious hearing to DWR by January 28, 2011, we would like the opportunity to consider suggestions by the other parties on hearing procedures. How can this be accomplished?

INVENTORY:

GBWN supports the requirement for inventorying the water resources in basins targeted for interbasin water transfers. Our concern is that the inventories will not be completed before the evidentiary exchanges scheduled for the spring of 2011. Also, are vested water rights and federal reserved water rights to be included in the inventory? We do not understand the vague statements over the necessary completion of the inventory requirement (see Goshute letter). How will inventories completed after the evidentiary exchanges be made a part of the hearing? What, if any, opportunities are there for independent, expert participation in developing or reviewing SNWA's inventories in the four basins? Finally, GBWN believes that any inventory, prepared solely by the applicant, needs to be subject to rebuttal during the hearing.

Thank you for considering our comments. If you have any questions, please let us know. We would be happy to meet with you to discuss our comments, concerns and questions.

Sincerely,

Rose Strickland /s/

Susan Lynn /s/

Rose Strickland, Coordinator

Susan Lynn, Coordinator

attachment (Goshute letter)